

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PATRICK J. WAGNER,	:	
	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	
v.	:	NO. 05-2828
	:	
DAVID DI GUGLIELMO, et al.,	:	
	:	
Respondents.	:	

ARNOLD C. RAPOPORT
UNITED STATES MAGISTRATE JUDGE

REPORT AND RECOMMENDATION

Before this Court is a pro se Petition for Writ of Habeas Corpus filed by the Petitioner, Patrick J. Wagner ("Petitioner"), pursuant to 28 U.S.C. section 2254. The Petitioner is currently incarcerated in the State Correctional Institution at Graterford, Pennsylvania. For the reasons that follow, it is recommended that the Petition should be denied for lack of jurisdiction.

Petitioner signed a previous pro se habeas petition in this Court on February 12, 2004, which was docketed on February 24, 2004. Wagner v. Commonwealth of Pa., No. 04-774 (J. Edmund Ludwig, 7/21/04). Petitioner's claims in his prior habeas petition were: (1) the Pennsylvania Board of Probation and Parole ("PBPP") abused its discretion or acted in an arbitrary or capricious manner by applying the tougher new parole rules enacted in 1996 to his case; and (2) the PBPP abused its

discretion or acted in an arbitrary or capricious manner by practicing bad faith and willful noncompliance in his case.

Petitioner's claims currently before this Court are:

(1) the Board violated his Constitutional rights to due process in that it did not have authority or jurisdiction over him in order to impose additional convicted and technical parole violations on hi[m] after being re-incarcerated by the Board on October 1, 2001; (2) the Board violated his Constitutional rights to due process in extending his judicially imposed sentence by 2 years, 1 month and 20 days; (3) the Board has violated the Ex Post Facto Clause by applying post-1996 policies and procedures to his parole release as a special condition; (4) the actions of the Respondents have violated his Constitutional right to due process; and (5) the actions of the Respondents are an abuse of discretion, arbitrary and capricious in retaliation for the exercise of his Constitutional rights.

Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Nothing in the record currently before this Court indicates that Petitioner sought or obtained such authorization from the Third Circuit.

Therefore, I make the following:

RECOMMENDATION

AND NOW, this day of October, 2005, IT IS
RESPECTFULLY RECOMMENDED that the Petition for Writ of Habeas
Corpus filed pursuant to 28 U.S.C. section 2254 should be DENIED
for lack of jurisdiction. There are no grounds upon which to
issue a certificate of appealability.

BY THE COURT:

ARNOLD C. RAPOPORT
United States Magistrate Judge